



**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**VIRGINIA WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION**

**ORDER BY CONSENT  
ISSUED TO**

**EAVERS BROTHERS EXCAVATING, INC.**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Sections 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and Eavers Brothers Excavating, Inc., to resolve certain alleged violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Order" means this document, termed a Consent Order under the authority of the Virginia Waste Management Act.
3. "Waste Board" means the Virginia Waste Management Board, a permanent Citizens' Board of the Commonwealth of Virginia described in Va. Code §§ 10.1-1401 and 10.1-1184.
4. "Eavers" means Eavers Brothers Excavating, Inc.

5. "DEQ" means the Virginia Department of Environmental Quality, an independent administrative agency within the executive branch of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
6. "VRO" means DEQ's Valley Regional Office.
7. "Director" means the Director of DEQ, whose powers and duties are described in Va. Code § 10.1-1185.
8. "VSWMR" means the Waste Board's Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

### **SECTION C: Findings of Facts and Conclusions of Law**

1. Eavers owns an abandoned gravel quarry on the east side of Stony Run just southeast of the intersection of Routes 608 and 651 southwest of Stuarts Draft in Augusta County ("the Site").
2. On September 24, 2003, DEQ staff inspected the Site. Staff observed a large amount of solid waste in the form of construction debris including stumps, metal items, woody materials, and plastic pipe have been disposed on the Site. Staff observed that some of the waste materials were partially covered with soil. DEQ has not issued a permit to Eavers authorizing disposal of solid waste on the Site.
3. On October 21, 2003, DEQ sent Eavers a Warning Letter regarding the apparent unpermitted solid waste disposal facility. DEQ requested that Eavers Brothers respond in writing within 30 days with a plan for correcting the apparent violation cited in the Warning Letter. Eavers did not respond to the Warning Letter.
4. On December 9, 2003, DEQ issued Notice of Violation No. WS-03-11-VRO-037 to Eavers citing the following apparent violations of the Va. Code and the VSWMR:
  - a. Unpermitted disposal of solid waste in apparent violation of Va. Code § 10.1-1408.1.A and 9 VAC 20-80-90.A.1 of the VSWMR.
5. On December 18, 2003, representatives of Eavers and DEQ met in an informal enforcement conference. The parties agreed that a series of backhoe test pits would be dug on the Site to assess the extent of the unpermitted disposal. The parties also agreed that this assessment would be used by Eavers to propose a plan of corrective action for the Site.
6. On July 21, 2004, DEQ approved Eavers July 19, 2004 plan of corrective action ("the Approved Plan") for the Site. The Approved Plan has been incorporated into Appendix A of the Order.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1455, orders Eavers, and Eavers agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Eavers, Eavers voluntarily agrees, to pay a civil charge of **\$3,000** within 30 days of the effective date of the Order in settlement of the apparent violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The payment shall include Eavers' Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. The Board and Eavers agree that pursuant to 9 VAC 20-80-10 of the VSWMR, treatment means any method, technique or process, including but not limited to incineration, designed to change the physical, chemical or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation or recovery. The Board and Eavers also agree that pursuant to 9 VAC 20-80-90.A.1. of the VSWMR, no person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of solid waste without a permit from the director. Finally, the Board and Eavers agree that provided that Eavers complies with the provisions of Paragraph 1, Section D and the provisions of Appendix A of the Order, Eavers shall not be required to obtain a permit from the Board pursuant to 9 VAC 20-80-90.A.1. of the VSWMR.

#### **SECTION E: Administrative Provisions**

1. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in Notice of Violation No. WS-03-11-VRO-037 issued to Eavers on December 9, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
2. For purposes of this Order and subsequent actions with respect to this Order, Eavers admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

3. Eavers declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any and all other facts and conclusions of law, including any action taken by the Board to enforce this Order.
4. Failure by Eavers to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
5. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
6. Eavers shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Eavers shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Eavers shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

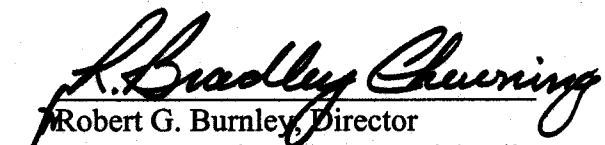
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Eavers intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

7. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
8. This Order shall become effective upon execution by both the Director or his designee

and Eavers. Notwithstanding the foregoing, Eavers agrees to be bound by any compliance date which precedes the effective date of this Order.

9. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Eavers. Eavers may petition the Director to terminate the Order following completion of all actions required under the Order. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Eavers from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
10. By its signature below, Eavers voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14 day of September, 2004.

  
Robert G. Burnley, Director  
Department of Environmental Quality

Eavers voluntarily agrees to the issuance of this Order.

By: Raymond Eavers  
Date: 8/2/04

Commonwealth of Virginia

City/County of Augusta

The foregoing document was signed and acknowledged before me this 5<sup>th</sup> day of August, 2004, by Raymond Eavers, who is  
(name)

President of Eavers Brothers Excavating, Inc., on behalf of the Corporation.  
(title)

Kathy B. Davis  
Notary Public

My commission expires: March 31, 2004.

APPENDIX A

**SCHEDULE OF COMPLIANCE  
EAVERS BROTHERS EXCAVATING, INC.  
UNPERMITTED SOLID WASTE DISPOSAL SITE  
AUGUSTA COUNTY, VIRGINIA**

1. Eavers shall provide access for DEQ personnel to all areas of the Site, including active and non-active areas, and all records pertaining to operation of the Site, at any reasonable time, with or without advanced notice, with regard to verifying that Eavers is performing or has performed the activities under this Consent Order.
2. No earth disturbance activities may occur at the Site until Eavers obtains coverage under the General Virginia Pollutant Discharge Elimination System Permit for Storm Water Discharges From Construction Activities.
3. **Not less than two business days** before commencing the initial waste incineration activities, Eavers shall contact the Deputy Regional Director of the VRO at 540-574-7800 so that DEQ staff can schedule an inspection of Site activities.
4. Eavers shall perform all work on Site in accordance with the Approved Plan, including using the equipment and following the sequence of construction activities identified therein.
5. Only stumps, brush and untreated wood materials may be incinerated on the Site. All other waste materials encountered during excavation of the Site that constitute "Solid Waste" within the meaning of VSWMR at 10.1-1400 shall be either directly loaded for transport to off-site facilities authorized to accept the waste or stockpiled on the Site for future disposal at an off-site facility authorized to accept the waste. All materials stockpiled for future off-site disposal shall be removed from the Site **not later than 30 days** following the completion of removal of waste from Phase III of the project.
6. During excavation activities, if Eavers encounters material in drums, gas cylinders, or other materials that may be "hazardous materials", "hazardous substances" or "hazardous waste" as those terms are defined in VA Code § 10.1-1400, Eavers shall immediately notify the VRO of the discovery. In addition, Eavers shall isolate the material and take immediate steps to minimize worker exposure and a release of the waste to the environment. Should such an incident pose emergency conditions such as fire, explosion or a release or imminent release of suspected hazardous materials, Eavers shall immediately notify the local emergency management authorities and follow any instructions they may provide regarding the safety of those individuals in the vicinity of the Site. Any wastes encountered at the Site which are found to be a regulated hazardous waste or a waste not meeting the VSWMR definition of solid waste shall be managed and disposed of in accordance with the requirements of the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.*, or other regulations as applicable.

7. In order to minimize the potential for creating objectionable smoke and other air quality issues, once the incineration/air curtain undergoes initial startup, Eavers shall take measures to minimize the need to shutdown and re-start the incineration activities.
8. If DEQ staff observe that Site activities are causing air emissions, such as smoke, and that the emissions are having an adverse impact on air quality, or are creating a nuisance, Eavers shall take all measures necessary to eliminate those air emissions. If Eavers cannot eliminate or minimize the air emissions, Eavers shall immediately cease the activity at the Site and submit an alternative plan and schedule for disposal of the solid waste. Upon approval of the alternative plan and schedule, it shall become a part of this Order and enforceable as such.
9. Stockpiled ash from the incineration activity shall be evenly distributed over all disturbed areas of the Site prior to Construction Sequence No. 4 (establishment of vegetative cover) in accordance with the Approved Plan.
10. In order to document proper disposal, **not later than 45 days** following completion of removal of waste from Phase III of the project, Eavers shall submit to the VRO, copies of the waste disposal receipts/manifests for any waste materials removed from the Site in accordance with Paragraphs 5 and/or 6 of this Appendix.